### FW

#### Meaning can only be grounded in a framework of experience. That framework must be understood within a pragmatist methodology.

West 89 summarizes and quotes Dewey, Cornel. (Cornel Ronald West (born June 2, 1953) is an American philosopher, political activist, social critic, author, and public intellectual). The American Evasion of Philosophy : A Genealogy of Pragmatism. University of Wisconsin Press, 1989. The Wisconsin Project on American Writers. Pg 88-89. NP 2/25/17.

For Dewey, modern philosophy has five paradigmatic notions of experience: first, as a knowledge affair; second, as a psychical thing shot through with "subjectivity"; third, as registering what has taken place, with an exclusive focus on the past; fourth, as an aggregation of simple particulars; and last, as antithetical to thought. For Dewey, these five governing conceptions of experience constitute the pillars upon which rests the subject-object epistemological problematic of modern philosophy. His own transactional conception of experience, buttressed by Dar-winian biology and historical consciousness as well as rooted in Emersonian sensibilities, rejects each of these paltry ideas of experience. His three defi-nitions of experience in the essay lay bare his rejection and threefold debt. Experience is primarily a process of undergoing: a process of standing something; of suffering and passion, of affection, in the literal sense of these words. The organism has to endure, to undergo, the consequence of its own actions. Experience, in other words, is a matter of simultaneous doings and sufferings. Our undergoings are experiments in varying the course of events; our active tryings are trials and tests of ourselves ... Nothing can eliminate all risk, all adventure. The obstacles which confront us are stimuli to variation, to novel response, and hence are occasions for progress. If biological development be accepted, the subject of experience is at least an animal, continuous with other organic forms in a process of more complex organization. An animal in turn is at least continuous with chemico-physical processes which, in living things, are so organized as really to constitute the activities of life with all their defining traits. And experience is not identical with brain action; it is the entire organic agent-patient in all its interaction with the environment, natural and social. The brain is primarily an organ of a certain kind of behavior, not of knowing the world. And to repeat what has already been said, experiencing is just certain modes of interaction, of correlation, of natural objects among which the organism happens, so to say, to be one. It fol-lows with equal force that experience means primarily not knowledge, but ways of doing and suffering. Knowing must be described by discovering what particular mode-qualitatively unique-of doing and suffering it is.46 89 Dewey's metaphilosophy is essentially an act of intellectual regicide; he wants to behead modern philosophy by dethroning epistemology. For too long, modern philosophy has deferred to the authority of "knowl-edge" in the name of science, without questioning this authority and demystifying science, i.e., bringing it down to earth, as it were. There-fore, the diversity, complexity, and plurality of experience have been "assimilated to a nonempirical concept of knowledge. "47 This impoverished empiricism "has said Lord, Lord, Experience, Experience, but in practice it has served ideas forced into experience, not gathered from it."48 As I noted earlier, Dewey is demoting knowing without devaluing it. In fact, one can more fully appreciate the value of knowledge when it is viewed as an indispensable functional activity within the larger context of experience. Neglect of context leads toward gross distortion and truncation in epistemology-centered philosophy.

#### Dewey’s pragmatic theory provides a procedure that accounts for plurality within society and enables resolution of conflicts despite conflicting values– this avoids appealing to hegemonic and authoritarian value systems

Ralston 11, Shane J. In Defense of Democracy as a Way of Life: A Reply to Talisse’s Pluralist Objection. sites.psu.edu/wp-content/uploads/sites/9354/2011/09/InDefenseDemocracyWayLife-SRalston.pdf. NP 3/26/17.

In this penultimate section, I present Dewey’s pluralist procedure and offer an illustration of democracy-as-a-way-of-life-in-action: the ‘reasonable accommodation’ debate in Québec, Canada. The reason for examining this case study is not only to illustrate how procedures central to Deweyan democracy operate in practical politics, but also to challenge an implicit assumption of Talisse’s objection, namely, that a single reasonable objection to a democratic theory is sufficient to disqualify it.89 What is Dewey’s pragmatic standard of inclusion? It is a highly, though by no means exclusively, proceduralist standard that asks and answers two questions. The first question pertains to the plurality of interests held in common by different groups—even those espousing divergent beliefs and conflicting worldviews. Specifically, it queries those affected groups, “How numerous and varied are the interests which are commonly shared?”90The second question concerns whether these groups are open to readjusting the ways in which they associate. It asks, “How full and free is the interplay [of conventional forms of association] with other forms of association?”91 Thus, Dewey’s procedure for addressing the fact of pluralism might be called the ‘mutual interest and associative flexibility’ standard of inclusion. According to this two-step procedure, members of different groups, first, identify their shared interests and, second, propose novel and flexible ways for associating in order to address their shared problems. No part of this procedure is coercive or “oppressive” as measured against Rawls’s standard of reasonable pluralism. Moreover, no part requires that groups subordinate their separate worldviews to what Talisse terms “a substantive conception of democracy.” Furthermore, no part coerces citizens to conform their values and ways of life to a governmentally endorsed regime of value commitments, or an official conception of the good life. According to Larry Hickman, “Pragmatism holds that cultural difference per se is not an occasion that calls for inquiry, but only cultural difference that leads to a situation in which there are mutually exclusive claims about what is to be done.”92 Therefore, democracy as a way of life represents a method, not a state-sponsored worldview—a procedure for negotiating, though not permanently resolving, the deeply divisive and sometimes intractable differences between groups beholden to competing forms of life. In this way, Dewey’s democratic theory resembles, as William Caspary suggests, a framework for understanding democracy as a method for mediating conflicts.93 To demonstrate how Dewey’s pluralist procedure functions in a practical political setting, I would like to examine a recent public policy debate in Canada. When a law or norm is contrary to the Canadian Charter of Human Rights and Freedoms, the government has a legal obligation to modify the law or norm accordingly—to, in effect, accommodate reasonable differences between individuals and groups within a liberal regime of procedures and rules. For instance, despite the legal requirement that all voters show their face when casting a ballot, Elections Canada has permitted an exemption for Muslim women wearing the niqab (veil) or burka.94 Though these exemptions are well-intentioned, heated dispute has arisen at the margins. Those groups whose members have been granted exemptions face rival groups claiming that the exemptions violate norms of fair and equal treatment. In the province of Québec, the public debate has oscillated between civil confrontation and xenophobic denunciations. The question at issue is, under what circumstances does accommodation become unreasonable?95 To address the escalating tensions between these groups and their competing ways of life, the provincial government has established a commission composed of two renowned Canadian public intellectuals.96 The Reasonable Accommodation Commission consults with academics, policy leaders and members of the rival groups. Though the results have been mixed, an institutional form (viz. the Commission) has been established as an initial step towards progressively arbitrating, though not permanently settling, the contested nature of what constitutes reasonable (versus unreasonable) accommodation.97 To appreciate the significance of the ‘reasonable accommodation’ debate for my overall argument, it helps to consider the rationale for examining this and other case studies. One reason is to show that in the context of practical politics it would be unreasonable to accept Talisse’s low threshold for invalidating a democratic theory, viz., a single reasonable objection. Instead, if Dewey’s democratic theory is to be criticized internally—or to borrow Talisse’s phrase, “on its own pragmatic grounds”—the theory must be evaluated with respect to its practical consequences for actual public policies. Does the Canadian policy respect the ethnic, cultural, religious and philosophical differences among citizens? Does it enhance political legitimacy and regime stability? Does it tend to bring about fair and just outcomes? Answering these kinds of questions does not fall solely within the preserve of philosophers or democratic theorists. In the real world of democratic politics, policy questions such as these are rarely sequestered to faculty seminars for philosophers and democratic theorists to settle.98 Instead, questions of this type are matters of public policy, addressing problems that are better left to ordinary citizens and their representatives to deliberate about, negotiate over and decide on appropriate policy solutions to. If political philosophers and democratic theorists have any role to play in the policy process, it is that of public intellectuals attempting to persuade their fellow citizens to see the value in sharing their views—a role to which Dewey was no stranger.99 In the world of rough-and tumble politics, unlike the faculty seminar room, a single objection, even if reasonable, is rarely enough to disqualify a candidate theory that would, by its adoption, likely improve our political practices, or the methods by which we solve our common problems. So, Talisse has more work to do if he hopes to successfully convince a critical mass of citizens and policy-makers—let alone pragmatists and Deweyans—to say “farewell to Deweyan democracy.”100 Conclusion Both formulations of Talisse’s pluralist objection fail to convince Deweyans to drop the language of pluralism because democracy as a way of life cannot be construed as an endorsement for a state-sponsored comprehensive worldview or a thoroughly substantive conception of democracy. Instead, Dewey offers a two-step procedure for negotiating TRANSACTIONS Volume 44 Number 4 646 the inescapable fact of pluralism. Similar to this procedure, the approach taken by the Canadian Reasonable Accommodation Commission highlights the affected parties’ mutual interests and suggests flexible new ways for them to associate. However, one might object that this illustration poses the risk of resorting to the same filtering strategy I have identified in Talisse’s work, that is, reading Dewey’s ideas through contemporary theoretical frameworks. Appeals to recent political events typically invoke theories, approaches and views that were alien to Dewey’s times and thought, and in ways strikingly similar to Talisse’s Berlinian, Rawlsian and Sandelian filters. While the risk of filtering is undeniable, I believe that the pragmatic value of appealing to these recent events justifies that risk. Not only does the practice help us to see the contemporary relevance of Dewey’s ideas, it also assists Dewey scholars to rebut objections similar to Talisse’s, and to decline like-minded invitations to give up the language of contemporary political theory. 101

#### Thus the standard is consistency with pragmatic democratic decision procedure. Impact calculus – a. this is not util – it’s a question of following a certain procedure, not maximizing ends b. pragmatism is not just an ethical theory, but a theory of truth – it proposes a method for deciding what constitutes a legitimate justification. Thus, pragmatic theory constrains all modes of decision-making.

#### I contend that absolutist defenses of free speech erase particularity and ignores the need for modes of experimentation.

#### First, epistemic humility and support for the fundamental principles of educational institutions require diverse experimentation with different approaches to speech regulation

Posner 16. Eric Posner, 1-8-2016, "Campus Free Speech Problems Are Less Than Meets the Eye," Cato Unbound, https://www.cato-unbound.org/2016/01/08/eric-posner/campus-free-speech-problems-are-less-meets-eye, accessed 3-8-2017. NP

While it is true that most universities have speech codes, these codes are designed not to stifle but to enhance discussion by discouraging students from being rude to each other. One of the oddities of the American university is that students are expected to live together and not just attend classes together. Universities’ understandable but obsessive genuflection to the god of diversity means that students of radically different backgrounds and attitudes are thrown together. The idea is that they are supposed to learn from each other; the reality is that everyone must constantly be on his guard because it is so easy to inadvertently offend someone from a different background by innocently expressing one’s opinion. While Lukianoff and I can retreat from the public square to the privacy of our homes if we find public debate offensive, students who live in dorms have no such option. This is why students so frequently self-segregate by joining fraternities and clubs, and by moving off campus when allowed to. In this way, they act no differently from most Americans who self-segregate by moving to homogenous neighborhoods. But self-segregation within the university can go only so far, and this is why universities insist on the authority to punish students who “harass” each other—meaning who fail to be reasonably polite to each other. This is regulation of manners, not of speech or opinion—in the spirit of time, place, and manner regulations that governments are permitted to impose even under the strict doctrines of First Amendment law. University speech codes (at least, in private universities) go farther because campus life is different from public life. If a white student insists on telling his black roommate that affirmative action is wrong, I doubt any administrator would consider this a violation of speech codes. If instead he calls his roommate racial epithets, I suspect the university would intervene. I don’t know whether Lukianoff would regard this as a violation of the white student’s freedom of speech, but it would be ridiculous to require the black student to tolerate this boorish behavior. Universities approach this problem in many ways. As Lukianoff mentions, some universities leave students to themselves; others use speech codes. The speech codes vary tremendously, as do the punishments that are meted out for violations. The perplexing thing about Lukianoff is that he dogmatically insists that all universities follow exactly the approach he advocates. While Lukianoff may be right that an everything-goes approach may ultimately be best for students, he provides no evidence for this view, and this is because there is no such evidence, one way or the other. It’s certainly not the approach used in the classroom. Teachers almost never permit students to express themselves in a hostile, rude, or insensitive way. This is not some new-fangled, PC-inflected innovation; anyone who has taught a class or been a student knows that willfully obnoxious behavior interferes with learning. Offensive speech gets students riled up and deters them from taking unfamiliar ideas seriously. The regulation of speech outside the classroom is trickier. Various forms of speech regulation may be appropriate for different groups of students. Universities have figured this out, and in fact there is great diversity in how universities regulate speech. Many religious universities, for example, require, or at least say they require, students to keep theologically disreputable views to themselves. Some forbid cursing. While I wouldn’t have wanted to attend such institutions, I see no reason why students shouldn’t attend them if they want to. The intellectual basis of freedom of speech is epistemic humility—the notion that since we cannot be confident that we know the truth, we need to allow people to debate it. But then we must also acknowledge that we don’t and can’t know the best rules for promoting those debates. That’s why, in fact, the First Amendment allows people to form collectivities like newspapers, think tanks, and political parties where the institution itself embodies a certain viewpoint, and all who participate in the institution can be required to accept it (or at least pretend to accept it). We allow liberal newspapers and conservative newspapers rather than requiring all newspapers to publish diverse political views because we think that restrictions of speech within institutions may promote freedom of speech across institutions. The same logic applies to universities, whose leaders should be allowed to experiment in the same way. Lukianoff doesn’t see this because he imagines that free speech is a good in itself. In fact, freedom of speech is a means to an end, and our understanding of free speech must be derived from the end that we seek to achieve. In politics, that end is good governance and political competition. In education, that end is—education. The recent student demands for limitations on freedom of speech—demands that, as he concedes, put him in a “somewhat difficult position”—flummox Lukianoff because free speech is on both sides of the issue. Should he support the students because they exercise freedom of speech, or oppose them because they want to restrict it? He resolves this contradiction by, in effect, arguing that the students should be free to demand speech restrictions as long as universities refuse to submit. But that’s a cop-out. If you know in advance that no one will take seriously your speech, your right to freedom of speech is empty. However, in the Atlantic article that he coauthored with psychologist Jonathan Haidt, Lukianoff does make an argument against restrictions on campus speech based on a specific educational philosophy. Haidt and Lukianoff argue that efforts by students to restrict speech will, if accepted by universities and embodied in speech codes, cause psychological harm to students, and interfere with their education, by protecting them from dangerous ideas rather than forcing them to confront and understand them. The authors may be correct, but it is important to understand that they are taking a specific and contestable position on how universities should teach and how campus life should be regulated. The only way to know whether they are right or wrong is to allow universities to try different approaches, so that we can use evidence to determine which approach is best. Lukianoff the free speech advocate and Lukianoff the educational philosopher are on opposite sides of the question.

#### Pragmatic institutional change requires open-ended experimentation.

Ralston 10, Can Pragmatists Be Institutionalists? John Dewey Joins the Non-Ideal/Ideal Theory Debate. Shane J. Ralston - 2010 - Human Studies 33 (1):65-84.

Of course, the difficulty with this account, at least for my argument, is that it cuts the wrong way. Following Dewey' s example would prevent pragmatists from walking in the shoes of institutionalists or, for that matter, engaging in non-ideal theory, especially when doing so means prescribing institutional solutions to social and political problems. A more promising account begins with the fairly non- controversial assumption that encouraging social and political reform demands, at a minimum, some degree of ongoing institutional transformation. Eliminating apartheid in South Africa required establishing and conducting a series of truth commissions, just as ending racial segregation in the American South meant that Southern colleges and universities had to adopt non-discriminatory admissions policies. Moreover, institutional transformation begs for experimentation with alternate policy instruments and objectives.30 Experimentation begins with the identification of those actual, not hypothetical, circumstances of the present situation. James Campbell contends that pragmatist policy making should resemble an open-ended experimental program: "[A]ll policy measures should be envisioned as experiments to be tested in their future consequences. As a consequence of this testing, the program will undergo ongoing revision" (1995, pp. 207-208). Likewise, Dewey writes, "[t]hinking ends in experiment and experiment is an actual alteration of a physically antecedent situation [and one might add: institutions] in those details or respects which called for thought in order to do away with some evil [or problem]" (1916/1996, MW 10:339, emphasis in original). Experimentation also involves a survey of those interests and values at stake in the eventual outcome (or valuation), the statement of intermediate goals or "ends in view," and tests of hypotheses or proposed courses of action. Frank Fischer explains: "Policies, he [Dewey] maintained, represent plans of action selected from alternatives having scientifically observable consequences that provide the basis for valid testing" (1980, p. 160). In the parlance of contemporary pragmatists and political theorists, experimental political inquiry starts and ends in the middle of things, namely, with the observation and manipulation of non-ideal, rather than ideal, conditions of politically problematic situations.

#### Second, the marketplace of ideas can not self-regulate – democracy demands equality and opportunities for all to participate, which necessitates restricting speech

Powell 98. John A. Powell, (John A. Powell leads the UC Berkeley Haas Institute for a Fair and Inclusive Society and holds the Robert D. Haas Chancellor’s Chair in Equity and Inclusion,) As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society, 16 Law & Ineq. 97 (1998), Available at: <http://scholarship.law.berkeley.edu/facpubs/239>. P101-104. NP 3/17/17.

While the exalted status of the First Amendment among liberal values is understandable, 23 history teaches that no one value supporting democratic society remains static, either in importance or in application. 24 The reverence the First Amendment has traditionally been accorded as a means of vitiating multiple tyrannies should not mean that classic doctrinal formulations are sacrosanct.25 This Article suggests that a democratically valid judicial decision must clearly enunciate a conception of justice informed by an awareness of the multiple values within our society and the multiple identities within ourselves. 26 Reformulation of identity in light of the insights proffered by critical race and post-modern theorists suggests that the classic remedy for harmful speech that is, more speech-will, in some instances, perpetuate disparities of power and destabilize our sense of self. The marketplace of ideas cannot self-regulate so long as objections to lack of participatory access are subsumed by claims that the liberty interest in expression is primary to the equality interest in participatory access. A self-regulating marketplace presupposes an equal starting line an assumption that has never been a reality in American political life.27 speech may be preserved through an adoption of a democratically pragmatic conception of participatory justice. This Article concludes by examining Keegstra v. Regina,28 a Canadian Supreme Court case that serves as an example of how lucid reasoning concerning the fundamental interest in participatory access is capable of balancing the values of both liberty and equality. This Article also concludes that in recognizing participation as a value superior to any significant experience of or aspiration to liberty or equality, authentic democratic foundations presuppose that all actors share a common narrative grounding. Recourse to the regulative ideals of democracy will not, of course, prove to be a panacea. Rather, by recognizing the plasticity and multiplicity embedded in a mature democratic vision, we can identify and work toward resolving unnecessarily pronounced tensions. Contextualized discussions of opposing narratives demonstrate that in many ways the referents are the same-the demand for equal liberty is also a demand for democratic equality.

#### Third, affirming an absolutist conception of speech ignores our own subjectivity and erases speech’s multiplicity

Powell 98. John A. Powell, (John A. Powell leads the UC Berkeley Haas Institute for a Fair and Inclusive Society and holds the Robert D. Haas Chancellor’s Chair in Equity and Inclusion,) As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society, 16 Law & Ineq. 97 (1998), Available at: <http://scholarship.law.berkeley.edu/facpubs/239>. P107-108. NP 3/17/17.

Journalists offer an excellent example of the way our narratives construct and constrict our interests and responses. I often receive calls from reporters after racist incidents on college campuses. They are almost always interested in whether explicitly racist incitements might lead to the consideration of policies to limit speech by the college. Very few are interested in the rise of explicit racism and the consequent threat to equal opportunity for minority groups on college campuses. To the extent that they recognize these issues, they see them as trumped by free speech concerns. 49 There is both a failure to seriously engage other perspectives and to see free speech as more than a unitary concept. There is an assumed harm associated with anything less than an absolutist view of speech and a trivialization of the serious harm that speech can and does cause. After speech is situated in a primary position, concern about racist hate speech and White domination through speech is seen as no more than a move to censor, or at least chill, speech. This happens without serious consideration of the chilling and more destructive effects of speech that maintain exclusion and racial dominance. Professor Fish similarly observes that when journalists reflexively complain that hate speech regulations may have a potentially "chilling effect," they focus on the right of expression to the detriment of other rights.50 That is, they fail to consider how the chilling effect of hate speech impacts upon targeted minorities constitution of self or participation. Of course, the world only makes sense because we have an orientation to it, and it is inimical to our social psychology not to identify with that perspective. 51 In ignoring or suppressing the subjectivity of our perspective, we fail to examine the multiple and various functions of speech that are at times in conflict with the values underlying freedom of speech. Problems occur when the lens through which we see the world destroys our ability to recognize that what is peripheral for us may be central or defining for others. Through this failure to notice and examine that which is outside the dominant perspective, the harm caused by the free speech regime is either undetected, or when detected, seen as negligible.

# F/L

### A2 Counterspeech

#### The idea that more speech can remedy harms reproduces power disparities and inequity in participatory access – this comes prior to your democratic values

Powell 98. John A. Powell, (John A. Powell leads the UC Berkeley Haas Institute for a Fair and Inclusive Society and holds the Robert D. Haas Chancellor’s Chair in Equity and Inclusion,) As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society, 16 Law & Ineq. 97 (1998), Available at: <http://scholarship.law.berkeley.edu/facpubs/239>. P110-111. NP 3/17/17.

The unfortunate reality is that the "more speech" remedy is ineffectual where one party to an exchange lacks the capacity for empathetic and respectful dialogue and the other lacks the power to mandate engagement. Where parties to an exchange share little in the way of overlapping narratives, assertions and counter assertions are likely to remain parallel, passing each other without ever engaging the intended listener. This does not mean that members of a democratic society should not strive to gain an understanding of perspectives outside their own experience. Nonetheless, the current reality, ignored by the traditional First Amendment narrative, is that the marketplace of ideas is not only skewed, but by its nature incapable of neutrality. The marketplace of ideas excludes and thus reproduces disparities in power. Disparities in power lead to disparities in participatory access. It is clear that in many hate speech cases the purpose and the effect is to injure and exclude, not to find the truth or engage in mere self expression. The marketplace of ideas metaphor became popular when society still believed in an objective truth. As this belief has been undermined, the apparent power of the metaphor is called into question. Some commentators have recognized this and have suggested a foundation based on a weaker claim of objective truth. Bollinger has argued for more speech based on a tolerance rationale instead of a truth rationale, and Baker has used liberty as his foundation.55 I have suggested that the function and values related to speech are varied and multiple, which suggests that the foundation and justification for speech must also be varied and multiple. But because of the unstable and multiple nature of speech values and truth, I assert that participation in the democratic self-constitutive process is prior to liberty and tolerance in many sites. While the value of respect has received significant attention,56 too little commentary exists discussing the uneasy relation between empathy and law. 57 As used in this Article, empathy refers to an experientially defined emotional response to the situation of another, the capacity to dance lightly in another's reality. Empathy requires consideration and effort and thus presupposes an experiential component 58 insofar as it is evocative of a desire to transform59 the necessarily limited bounds of one's experiential reality.60 Genuine empathy is an active process, rather than a passive statement of principle. 61

#### Only delimitations of acceptable and unacceptable speech makes language coherent – racist speech materializes racial constructions and should be excluded

Powell 98. John A. Powell, (John A. Powell leads the UC Berkeley Haas Institute for a Fair and Inclusive Society and holds the Robert D. Haas Chancellor’s Chair in Equity and Inclusion,) As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society, 16 Law & Ineq. 97 (1998), Available at: <http://scholarship.law.berkeley.edu/facpubs/239>. NP 3/17/17.

Like a richer view of the self, racial categories are not static, natural or coherent. Race is a social construct, and powerful social forces operate to render racial classifications opaque. Language materializes racial constructions. Epithets and similar linguistic constructions seriously harm minority members of society, individually and collectively, because of what such constructions suggest about the described individual's place within our social fabric. Yet when society debates the issue of how to regulate hate speech, the focus is primarily on the infringement of liberty interests. Unfortunately, we often overlook or misunderstand abuses of free speech, such as the tendency of free-speech advocates to portray their opinions in a way that precludes others' ideas. 5 Most Americans, including scholars and judges, take it as self-evident that we are free to "speak our minds."6 Yet as Professor Fish observes, "restriction, in the form of an underlying articulation of the world that necessarily (if silently) negates alternatively possible articulations, is constitutive of expression. Without ... an inbuilt sense of what it would be meaningless ... or wrong to say, there could be no assertion and no reason for asserting it."7 Nonetheless, the assertion that free speech in fact is not "free," and should not be free, involves for many a degree of cognitive dissonance.8 This discomfort occurs precisely because our tradition purports to embrace unconstrained expression. 9 First Amendment discourse traditionally forms part of the larger, more general narrative of liberty. Within this liberty narrative exists a rich but incoherent array of values that scholars often invoke to support an expansive notion of free speech.10 Free expression occupies a privileged position in our democratic society because many feel that any suppression would stifle the liberty and autonomy interests of the speaker, listeners and society in general. In recent years, courts and scholars have begun to question to what extent and under what conditions speech actually promotes individual autonomy," checks censorship 12 or ensures the attainment of truth and knowledge 13 in an uninhibited marketplace of ideas. 14 To promote these values, orthodox proponents of free speech argue that suppression of expression cannot be justified unless the speech falls within a recognized category of harmful speech. 15 Therefore, orthodox free speech advocates refuse to examine harms from speech falling outside of the recognized categories.

### A2 Deleuze

#### A pragmatist account of the multiplicity of the self retains the value of post-modernist arguments in favor of fragmentation while avoiding a nihilistic conclusion

Powell 98. John A. Powell, (John A. Powell leads the UC Berkeley Haas Institute for a Fair and Inclusive Society and holds the Robert D. Haas Chancellor’s Chair in Equity and Inclusion,) As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society, 16 Law & Ineq. 97 (1998), Available at: <http://scholarship.law.berkeley.edu/facpubs/239>. P120-121. NP 3/17/17.

A common response to the assertion that knowledge is provisional and thus undeserving of an uncritical dominance is to invoke the negative aspects of post-modernism.8 9 In one form, the post-modern world view perceives fundamental cultural fragmentation and collapse, a pathological splintering in all spheres of life. More particularly, certain post-modern theorists have characterized modern culture as ironically degraded or bemusedly crisic, or as kitsch laden.90 Presented in this manner, post-modernism seems only to tear down or denigrate the achievements of liberal modernity without offering an alternative. One alternative to the negative definitions so prevalent in post-modern discourse can be found in the psychological and theological concept of multiplicity. Multiplicity, most notably represented in the work of the neo-Jungian psychologist James Hillman, holds that the "crisis" of cultural fragmentation results from our psychological insistence on unity and singularity. 91 Borrowing from Greek mythology and Jungian traditions, Hillman counsels against a psychology of exclusion. In his view, psychological "polytheism" implies an essential and profound division of the soul.92 Rather than viewing this fragmentation as a pathology, however, Hillman suggests that society would benefit from an alternative definition of the psyche. Hillman prescribes a restructuring of our view of the psyche as naturally multiple-in other words, altering our definitions instead of expanding our notion of disorder. It is no accident of history, he suggests, that the term "schizophrenia" and the number of cases of pathological multiple personalities appear at around the same time as the First World War, a time when the definition of the ego as a unifying force stood in stark contrast to the existential dissociations of early cultural modernism. 93 Hillman also refers to William James, who recognized psychological and cultural fragmentation nearly a century ago, noting that "[r]eality MAY exist in distributive form, in the shape not of an all but of a set of eaches, just as it seems to be." 94 The multiplicity of the self has long been applied to problems of identity outside of the American, Western tradition.9 5 The concept of "selflessness" in Buddhist philosophy denies "a self described in terms of its structure rather than its story."96 This structural self, initially perceived as "permanent, unitary, and under its own power," diminishes in importance once the Buddhist practitioner begins to understand emptiness. 97 This process requires a thorough familiarity with the "ordinary experience of self,"98 which, once achieved, permits the insight of "emptiness"- the recognition of persons and things as "dependent arisings," existing interdependently rather than independently. 99 In this philosophy, the self that people tend to see as concrete exists only as an illusion, but an illusion with ethical consequences. Though consideration of such views moves us seemingly far afield from prevailing legal discourse, the tenets of Buddhist philosophies and neo-Jungian psychology suggest that perhaps the conceptions of self-identity embedded in legal structures leave us predisposed to attach ourselves to the illusory narrative of the unitary self. Both show us how the constructed and unessential phenomena of language and concepts create the patterns that we perceive as static, natural and neutral.100 One of the central insights of psychological multiplicity is the notion that many liberal paradigms rest on faulty psychological premises. As illustrated below, multiplicity explains some of the ways in which the psychological phenomenon of "projection"''1 1 serves to mask power disparities that undermine the traditional First Amendment narrative's remedy of "more speech." The central point to be derived from the following discussion is that psychological phenomena camouflage acts in which the dominant culture vilifies and silences minorities, thereby blocking meaningful access to democratic institutions. The argument that the marketplace of ideas perpetuates disparities in power does not, as Cass Sunstein notes, suggest that free speech is a myth. 102 Rather, it means that "what seems to be government regulation of speech might, in some circumstances, promote free speech .... [and] that what seems to be free speech in markets might, on reflection, amount to an abridgment of free speech."'1 3 The discourse within the marketplace of ideas may, in some instances, permit a position that is not only unpopular, but hateful, to limit the participation interest of other individuals. After exploring the more abstract insights of multiplicity, I will examine its utility in First Amendment jurisprudence

### A2 Free Speech

#### Your understanding of regulation of speech as an abridgment of it rests on faulty psychological premises

Powell 98. John A. Powell, (John A. Powell leads the UC Berkeley Haas Institute for a Fair and Inclusive Society and holds the Robert D. Haas Chancellor’s Chair in Equity and Inclusion,) As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society, 16 Law & Ineq. 97 (1998), Available at: <http://scholarship.law.berkeley.edu/facpubs/239>. P120-121. NP 3/17/17.

One of the central insights of psychological multiplicity is the notion that many liberal paradigms rest on faulty psychological premises. As illustrated below, multiplicity explains some of the ways in which the psychological phenomenon of "projection"''1 1 serves to mask power disparities that undermine the traditional First Amendment narrative's remedy of "more speech." The central point to be derived from the following discussion is that psychological phenomena camouflage acts in which the dominant culture vilifies and silences minorities, thereby blocking meaningful access to democratic institutions. The argument that the marketplace of ideas perpetuates disparities in power does not, as Cass Sunstein notes, suggest that free speech is a myth. 102 Rather, it means that "what seems to be government regulation of speech might, in some circumstances, promote free speech .... [and] that what seems to be free speech in markets might, on reflection, amount to an abridgment of free speech."'1 3 The discourse within the marketplace of ideas may, in some instances, permit a position that is not only unpopular, but hateful, to limit the participation interest of other individuals. After exploring the more abstract insights of multiplicity, I will examine its utility in First Amendment jurisprudence

### A2 Use Free Speech to Experiment

#### We should not wait for a moral revelation about truth – we should act based on our current inclinations about legitimate action

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

What I find most distressing about this incident is not that the ad was printed but that it was printed by persons who believed it to be a lie and a distortion. If the editor and her staff were in agreement with Smith's views or harbored serious doubts about the reality of the Holocaust, I would still have a quarrel with them, but it would be a different quarrel; it would be a quarrel about evidence, credibility, documentation. But since on these matters the editors and I are in agreement, my quarrel is with the reasoning that led them to act in opposition to what they believed to be true. That reasoning, as I understand it, goes as follows: although we ourselves are certain that the Holocaust was a fact, facts are notoriously interpretable and disputable; therefore nothing is ever really settled, and we have no right to reject something just because we regard it as pernicious and false. But the fact—if I can use that word—that settled truths can always be upset, at least theoretically, does not mean that we cannot affirm and rely on truths that according to our present lights seem indisputable; rather, it means exactly the opposite: in the absence of absolute certainty of the kind that can only be provided by revelation (something I do not rule out but have not yet experienced), we must act on the basis of the certainty we have so far achieved. Truth may, as Milton said, always be in the course of emerging, and we must always be on guard against being so beguiled by its present shape that we ignore contrary evidence; but, by the same token, when it happens that the present shape of truth is compelling beyond a reasonable doubt, it is our moral obligation to act on it and not defer action in the name of an interpretative future that may never arrive. By running the First Amendment up the nearest flagpole and rushing to salute it, the student editors defaulted on that obligation and gave over their responsibility to a so-called principle that was not even to the point.

# Additional Cards

#### A notion of free speech that idealizes non-interference on behalf of the government contradicts democratic ideals and a notion of the self as socially constituted

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This experience of the shadow operates at the level of racial politics as in all interpersonal relationships. Angela Harris paral- lels Hillman in observing that for groups denominated as racially "other" the "experience of multiplicity is also a sense of self- contradiction, of containing the oppressor within one self."130 In much the same way, the White oppressor also contains the other within him or herself. The contrast between Hillman and Harris occurs only to the extent that Hillman locates the shadow of ra cism as being "essentially present in 'white' consciousness itself and not, as usually claimed, only projected outward into 'black."' 13' A concrete example of the external and internal function of the "other" as a disembodied yet integral part of the self occurs in the process of exclusions by race and socioeconomic status. As Zora Neale Hurston's character Janie, from Their Eyes Were Watching God, painfully recalls, being placed in a social context of '"Whiteness" changed her experience of self: So when we looked at de picture and everybody got pointed out there wasn't nobody left except a real dark little girl with long hair standing by Eleanor. Dat's where Ah wuz s'posed to be, but Ah couldn't recognize dat dark chile as me. So Ah ast, 'where is me? Ah don't see me.' 132 In order to understand the ontology of the fractured self, it is im- portant to question the construction of categories. Law as a rule does not have the dubious luxury, promoted in Hillman's image of psychology, of allowing psychological polytheism to erupt without attempting to achieve insight.133 The law's view of the self has nudged forward, but it is still largely based in an eighteenth cen- tury notion of the self that cannot withstand critical review from psychological, anthropological, or popular perspectives. Yet the multiple self is shadowed in the work of Freud and Jung and is in full bloom in Hillman's. Law loves stable categories, even if they are in conflict with reality, and to reconcile this need with an es- sentially multiple conception of the self requires that we under- take an examination of how categories are articulated and become culturally intelligible and legally manageable. The burgeoning literature on the social construction of race and the renaissance of interest in the work of authors such as James Baldwin and Zora Neale Hurston assist in this endeavor. Both the Buddhist concept of the self, or no permanent self, and Hillman's concept of the multiple self are in sharp contrast to the nineteenth century notion of an independent, unitary, autonomous self. Instead both of these selves share substantial similarities with concepts of the self suggested by many late mod- ernists and feminists. The latter groups tend to view the self as interdependent, interconnected, and constantly being reconsti- tuted through social interaction. If any of these views of the self are taken seriously as con- trasts to the pre-given, unconstituted, liberal self, then systematic exclusion through hate speech not only threatens participation, but threatens both the construction and maintenance of the whole notion of an autonomous self.135 Furthermore, the diminished selves that result from exclusion cannot be healed through more speech. The self that requires the exclusion of other potential selves through hate speech and other practices is not simply an in- dependent self, but a self that requires the subordination of others, a direct conflict with our democratic norms. What this suggests is that restrictions on speech should be challenged to the extent that they undermine the self, as well as to the extent that they undermine our participation in democratic processes. This is no less true of other values, however, such as equality.136 Racist speech, however, is often practiced for the pur- pose of distorting participation and is part of a racial discourse that not only maintains racial hierarchy and exclusion, but also helps to create and maintain the racial subject. In fact, the very categories of Whiteness and racial Other are part of racial exclu- sion and racial discourse.137 The political legacy that flows from racist speech is constitutive of both the racial self and White su- premacy. If one is then seriously concerned about self expression, participation and autonomy, then one must be willing to examine how and where speech disrupts these values. There must be a self, for self-expression to have meaning. One can easily imagine cir- cumstances where speech or equality diminishes the self and par- ticipation, just as in some circumstances speech or equality will support these values. When speech undermines the self, however, it is difficult to articulate how it can be justified by democratic norms. It seems clear that the existing categories of free speech ju- risprudence do not comport with the reality of the socially con- structed racial self as illuminated by an empathetic understanding of our multiple identities. Arguments concerning the persistence of racism in insidious and subtle forms are rendered mutely inar- ticulate by the correct categories. Our propensity to project undesirable characteristics onto a political other serves to perpetuate and reify deeply embedded structural disparities in the market- place of ideas. As Professor Sunstein points out, while constitu- tional jurisprudence has long since abandoned the Lochner-era view of the Constitution as a prohibition of governmental interfer- ence with the distribution of rights, this laissez-faire attitude per- sists in the area of free expression.138 Within the First Amend- ment framework, pre-New Deal notions of neutrality still predominate. 3 9 On one hand, the First Amendment's defiance of New Deal insights into the nature of unregulated marketplaces serves the important value of checking myopic governmental re- strictions on individual liberties. 140 On the other hand, however, the persistence of laissez-faire attitudes toward the marketplace of ideas is a function of our inability to recognize the prevalence of unconscious racist attitudes and practices. Because these atti- tudes persist beneath the surface of American life, the occasional eruption of hateful forms of expression is treated as anomalous. This position, while psychologically soothing, fails to recognize the severe harm to the minority cultures' participatory interests that occurs when an overtly threatening act of racial hatred supple- ments the structural de facto racism by the majority culture of our society.

#### The pragmatist view of democracy is consistent with a fallibilist theory of knowledge

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The view of experience as not only made up of present choices, but constitutive of our future selves, is most vividly set forth in the tradition of American pragmatism, 176 beginning with great independent thinkers such as Jefferson, Lincoln, and Emer- son, reaching its height in the works of Dewey, James, and Pierce, and continuing today as a common underpinning to the divergent work of Seyla Benhabib, Richard Rorty and Cornel West. In the legal academia such diverse scholars as Daniel Farber, Richard Posner, Martha Nussbaum, J.M. Balkin, Stanley Fish and Drucilla Cornell invoke the tools of pragmatism. 177 Though much separates these thinkers, they notably share a preference for "shaping the future [compared] to maintaining continuity with the past."'178 They also share an adherence to the belief that "a fallibilist theory of knowledge emphasizes, as preconditions to the growth of scien- tific and other forms of knowledge, the continual testing and retesting of accepted 'truths,' the constant kicking over of sacred cows-in short, a commitment to robust and free-wheeling inquiry .... '"179 This philosophy is disruptive to traditional modes of thinking within legal institutions. Judge Posner artfully explains that: Although American lawyers have made significant contribu- tions to the theory of free speech, their attitude toward law it- self is pious and reverential rather than inquiring and chal- lenging. Law is not a sacred text, however, but a usually humdrum social practice vaguely bounded by ethical and po- litical convictions. The soundness of legal interpretations and other legal propositions is best gauged, therefore, by an ex- amination of their consequences in the world of fact .... [Tihere is a tendency in law to look backward rather than for- riential flux.1 The challenge posed by pragmatism is to recognize the extent to which the past, as represented by the present, implicates the fu- ture. John Dewey acknowledged the profound constructedness of pragmatism when he noted that "[s]ociety not only continues to exist by transmission, by communication, but it may fairly be said to exist in transmission, in communication."' 181 Community building occurs through a process of communication that results in shared aims, beliefs, aspirations and knowledge.182 According to Dewey, this process must ensure participation in a common under- standing, in such a way as to secure a common manner of re- sponding to expectations. In this way, communication is always instructive, both for the recipient and for the one communicating an experience. Communication is educational because to commu- nicate one must formulate an experience: "[t]o formulate requires getting outside of it, seeing it as another would see it, considering what points of contact it has with the life of another so that it may be got into such form that he can appreciate its meaning."'183 In the end, the process of community building through communica- tion not only educates, but "creates responsibility for accuracy and vividness of statement and thought."'8 4 This last phrase bears strong similarities to the "ideal speech situation" propounded by Habermas'8 5 insofar as it shows a lack of concern for metaphysical inquiry, and a pronounced bias for par- ticipatory equality in an experientially inclined democracy. 8 6 Re- formulated less abstractly, Dewey's belief in the force of experience leads one to inquire about the communities which are confined, if not in spirit, then in fact. The fortress domesticity currently holding sway in large segments of society marginalizes narratives by removing them from the mix that will eventually culminate in a set of shared values, assumptions, and methods for extracting these norms from experience. 187 Society is undermined by our practice of power and hegemony.

#### The environment created in educational spaces delimits possibilities for education

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If our capacities stem from minimizing external constraints to full participation in the social environment, the continuing re- formulation of particular social environments will become neces sary. Dewey, providing a developed philosophical framework for Lincoln's observations, understood experience as having specific consequences for the future.20 6 Experience for Dewey involves both an act and a passive reception of that act's consequence: "[w]hen an activity is continued into the undergoing of conse- quences, when the change made by action is reflected back into a change made in us, the mere flux is loaded with significance. We learn something."207 In this understanding of education, the "unconscious influence of the environment" plays a significant role. The operations of our interpretive community establish the trajectory and ultimately delimit the parameters of our education. From the centrality of consequences and the contingency of truth springs the realization that all our opinions and beliefs have ethical consequences. Dewey argues that "[a]n empiricism which is content with repeating facts already past has no place for possi- bility and for liberty."20 9 The future has significance because hu- man agency can make a difference-actions and opinions trans- form future aims and purposes. Belief in transformation and evolving notions of justice is an integral part of the American ide- ology, dating from Emerson to the present day.210 Although that belief can be challenged by despair over the still remote approxi- mation to the promise of authentic democracy, 211 pragmatism ad- monishes us to retain the belief that notions such as "justice" and "liberty" can be assessed through the actual, substantive results of the law.

#### Neutrality based liberalism is a failed political method

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Because it may be impossible or undesirable to escape the narrative of liberalism completely, we examine its ability to actu- ally achieve an authentic justice. There is no simple meaning of liberalism, but many evolving strains. It may be useful to consider Ronald Dworkin's distinction between neutrality-based liberalism and equality-based liberalism. 21 5 The former opposes any limita- tions on personal liberty because of moral skepticism toward the claim that any particular mode of being is better than any other mode. The latter version holds as fundamental the proposition that governments treat all citizens as equals, and insists on moral neutrality only to the extent that this notion of equality permits. Neutrality-based liberalism contains internal flaws which recom- mend against its maintenance. The first, and most obvious flaw, is the conviction that a hands-off approach with regard to personal liberties is somehow "neutral." In fact, this approach permits a form of privileging that denies alternative definitions of liberty, allowing liberty to be confused with license. Second, neutrality-based liberalism provides no moral basis for claims against injustice. Embedded in the idea of a govern- ment which abstains from regulating liberties is the concomitant conviction that the status quo adequately represents the subdivi- sions of social contract. In this way, moral skepticism can produce an uncritical acceptance of dominant narratives, with the implicit suggestion that alternative conceptions lack merit. This leads Dworkin to state that neutrality-based liberalism "is a negative theory for uncommitted people. 216

### Fish

#### Abstraction about the goodness of freedom of speech and expression prevent pragmatic discussions of the specifities of speech in a given instance//pragmatism offense???

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

In saying this, I would not be heard as arguing either for or against regulation and speech codes as a matter of general principle. Instead my argument turns away from general principle to the pragmatic (anti)principle of considering each situation as it emerges. The question of whether or not to regulate will always be a local one, and we can not rely on abstractions that are either empty of content or filled with the content of some partisan agenda to generate a "principled" answer. Instead we must consider in every case what is at stake and what are the risks and gains of alternative courses of action. In the course of this consideration many things will be of help, but among them will not be phrases like "freedom of speech" or “the right of individual expression," because, as they are used now, these phrases tend to obscure rather than clarify our dilemmas. Once they are deprived of their talismanic force, once it is no longer strategically effective simply to invoke them in the act of walking away from a problem, the conversation could continue in directions that are now blocked by a First Amendment absolutism that has only been honored in the breach anyway. To the student reporter who complains that in the wake of the promulgation of a speech code at the University of Wisconsin there is now something in the back of his mind as he writes, one could reply, "There was always something in the back of your mind, and perhaps it might be better to have this code in the back of your mind than whatever was in there before. “And when someone warns about the slippery slope and predicts mournfully that if you restrict one form of speech, you never know what will be re-stricted next, one could reply, "Some form of speech is always being re-stricted, else there could be no meaningful assertion; we have always and already slid down the slippery slope; someone is always going to be re-stricted next, and it is your job to make sure that the someone is not you. “And when someone observes, as someone surely will, that antiharassment codes chill speech, one could reply that since speech only becomes intelli-gible against the background of what isn't being said, the background of what has already been silenced, the only question is the political one of which speech is going to be chilled, and, all things considered, it seems a good thing to chill speech like "nigger," "cunt," "kike," and "faggot." And if someone then says, "But what happened to free-speech principles?" one could say what I have now said a dozen times, free-speech principles don't exist except as a component in a bad argument in which such principles are invoked to mask motives that would not withstand close scrutiny.

**The first amendment reaffirms the notion that speech can not constitute a harm since it’s constrained 2 ur mind but that’s bad and abstraction**

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This is where the idea that there is no such thing as a false idea (and therefore no such thing as a true idea, like the idea that women are full-fledged human beings or the idea that Jews shouldn't be killed) gets you; it prevents you, as a matter of principle, from inquiring into the real-world consequences of allowing certain forms of so-called speech to flourish. Be-hind the principle (that there is no such thing as a false idea) lies a vision of human life as something lived largely in the head. There is an entire book to be written about the stigmatization and devaluation of the body in First Amendment jurisprudence, but for the moment I will point out that First Amendment jurisprudence works only if you assume that mental activities, even when they emerge into speech, remain safely quarantined in the cortex and do not spill over into the real world, where they can inflict harm.